

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

BRIAN J. SHOOK,

Plaintiff,  
v.

CASE NO. 08-10262  
HON. MARIANNE O. BATTANI

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**OPINION AND ORDER OF THE COURT ADOPTING REPORT  
AND RECOMMENDATION GRANTING DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Brian J. Shook brings this action pursuant to 42 U.S.C. § 405(g), challenging the final decision of the Commissioner denying his application for disability insurance benefits (DIB) under Title II of the Social Security Act, 42 U.S.C. § 423. Plaintiff filed his claim for DIB on August 31, 2005, alleging a disability onset date of January 1, 2005, due to severe back pain, muscle weakness and chronic fatigue. On July 26, 2006, Administrative Law Judge Richard Sasena ("ALJ") reached his conclusion that Plaintiff retained the "residual functional capacity to perform a limited range of work at the medium level of physical exertion." Admin. Rec. at 31.

After the Appeals Council denied Plaintiff's request for review, Shook timely filed this action for judicial review of the Commissioner's decision. The case was referred to Magistrate Judge Donald A. Scheer pursuant to 28 U.S.C. § 636. Both parties filed dispositive motions, and in a Report and Recommendation ("R&R") dated October 29, 2008, Magistrate Judge Scheer recommended that the Plaintiff's Motion for Summary

Judgment be denied and that Defendant's Motion for Summary Judgment be granted.

In his Report and Recommendation, the Magistrate Judge Scheer informed the parties that objections to the R&R needed to be filed "within ten (10) days of service" and that a party's failure to file objections would waive any further right of appeal. Neither party filed an objection. Because no objection has been filed in this case, the parties waived their right to *de novo* review and appeal.

Accordingly, the Court **ADOPTS** the Magistrate Judge's recommendation, **DENIES** Plaintiff's Motion for Summary Judgment, and **GRANTS** Defendant's Motion for Summary Judgment.

**IT IS SO ORDERED.**

s/Marianne O. Battani  
HON. MARIANNE O. BATTANI  
UNITED STATES DISTRICT JUDGE

DATE: November 26, 2008

#### **CERTIFICATE OF SERVICE**

Copies of this Opinion and Order were served upon counsel of record on this date by e-filing.

s/Bernadette M. Thebolt  
Deputy Clerk